

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-1814

SUKHJIT SINGH,

Petitioner

v.

JOHN ASHCROFT, ATTORNEY GENERAL
OF THE UNITED STATES

On petition for review of a final order
of the Board of Immigration Appeals
(BIA No. A75-302-012)

Submitted Under Third Circuit L.A.R. 34.1(a)
March 26, 2004

Before: FUENTES, SMITH & GIBSON, Circuit Judges.*

(Opinion Filed: April 6, 2004)

OPINION OF THE COURT

The Honorable John R. Gibson, Senior Circuit Judge for the United States Court of Appeals for the Eighth Circuit, sitting by designation.

FUENTES, Circuit Judge:

Petitioner Sukhjit Singh illegally entered the United States on January 28, 1997 and applied for asylum and withholding of removal on February 14, 1997. Singh was born and raised in the village of Sounkra, in the Indian state of Haryana, a separate state bordering the state of Punjab. Singh claims that his life was in danger in India because of his membership in the Sikh political party, the Akali Dal Mann.

In June 1997 he was interviewed by an asylum officer of the INS to determine the credibility of his claim. The officer found that Singh's testimony was internally inconsistent, lacked detail and was illogical. He was referred to an Immigration Judge ("IJ") for a removal hearing. Singh renewed his request for asylum in front of the IJ and, implicitly, for withholding of removal, but he did not separately request protection under the Convention Against Torture. The IJ concluded that Singh's claim was not credible and, even if credible, the evidence showed that Singh could safely relocate to India because the circumstances there had changed such that it was unlikely he would face persecution there.

Singh appealed to the BIA and requested remand to the IJ to apply for protection under the Convention Against Torture, asserting that such protection was not available at the time of his May 2000 IJ hearing. The BIA affirmed the decision of the IJ, noting that changed country conditions indicated that Singh could safely relocate to India without fear of future persecution. The BIA also denied Singh's request for remand pursuant to the Convention Against Torture, noting that Singh had the opportunity to raise this issue

at his May 5, 2000 hearing, during which he was represented by counsel, and yet failed to do so.

Singh now appeals from the denial of asylum, withholding of removal, and denial of relief under the Convention Against Torture. He claims the IJ and the BIA ignored substantial evidence supporting his claims, misinterpreted and misapplied the relevant law, and failed to provide him a full and fair opportunity to present those claims. We conclude that there was substantial evidence to support the BIA's decision, and we will therefore affirm.

Singh admitted during his hearing that he could relocate to India safely. Specifically, when asked on cross-examination whether he could move back to India and live with his wife's parents, he replied that he could, but stated that he would prefer to move back to his own home. Appendix to Appellant Brief at 117. While the Court sympathizes with Singh's desire to live in his own home, this does not change the fact that Singh himself admitted that he may safely relocate to his native country. We note that Singh did not even contest this finding on appeal to the BIA, choosing instead to rely on his history of past persecution to prove that he would face future persecution if sent back. We think Singh's admission constitutes more than sufficient evidence upon which the BIA could rely in denying Singh's petition for asylum.

We also conclude that the BIA acted within its discretion in denying Singh's request for remand to pursue his claim under the Convention Against Torture, a claim

which, as the BIA pointed out, was available to Singh at the time of his May 5, 2000 hearing, during which he was represented by counsel.

Because Singh only raised the fear of future persecution based on past persecution and Convention Against Torture issues with the BIA, we shall refrain from addressing his other arguments. See 8 U.S.C. § 1252(d)(1) (“A court may review a final order of removal only if . . . the alien has exhausted all administrative remedies available to the alien as of right.”). For these reasons we will affirm the final decision of the BIA.